

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL MCCOY,

Defendant.

No. 09-00337 CW

ORDER ON
DEFENDANT'S
MOTIONS
CHALLENGING THE
VALIDITY OF GRAND
JURY TRANSCRIPTS

Although Defendant is still represented by counsel, he filed a motion in pro se challenging the validity of the "April 1, 2009 Grand Jury Reporter's Transcript of Proceedings Testimony of Agent Tehran Palmer." Docket Nos. 150, 158. Defendant appears to argue that the indictment in his case is invalid because the underlying grand jury testimony and transcripts from the grand jury proceedings are invalid. First, he argues that the witness is not properly sworn. This is incorrect. The transcript recites that Agent Tehran, "having been duly sworn, testified as follows." Second, Defendant questions the validity of the April 1, 2009

1 transcript because it bears close resemblance to the November 9,
2 2009 transcript. The transcripts from the two proceedings are
3 similar because Agent Tehran was asked similar questions about the
4 same topic in both proceedings. This does not give rise to an
5 inference that the later transcript is a forgery. Third, Defendant
6 takes issue with the fact that the shorthand reporter from the
7 April 1 proceeding "is from the state of California, county of
8 Alameda" and the shorthand reporter from the November 9 proceeding
9 is "from the United States district courts of the Northern district
10 of California." Docket No. 150. The transcripts reflect that both
11 of these court reporters are state certified. Nothing about the
12 reporters is inappropriate.

13 Fourth, Defendant claims that his attorney redacted the grand
14 jury's investigation number on the April 1 grand jury transcript.
15 However, the government states that it redacted this number,
16 presumably for confidentiality, and such a redaction does not
17 constitute evidence that the second transcript is invalid or
18 forged. Fifth, Defendant argues that his indictment is invalid
19 because it is based on hearsay testimony. However, hearsay is
20 admissible in proceedings before the grand jury which result in the
21 return of indictments. See Costello v. United States, 350 U.S.
22 359, 363-64 (1956); United States v. Al Mudarris, 695 F.2d 1182,
23 1185 (1983) ("It is well settled that an indictment may be based
24 solely on hearsay."). Sixth, Defendant requests a copy of the
25 grand jury's deliberation votes for the April 1 indictment;
26 however, nothing in the federal rules requires such disclosure.

27 In sum, after reviewing the indictments and the transcripts
28

1 from the grand jury proceedings, the Court concludes that they are
2 valid. Further, there is no evidence that anybody, including
3 Defendant's attorney, forged, or in any way "doctored," the
4 transcripts from the grand jury proceedings. Accordingly,
5 Defendant's motions are denied. Docket Nos. 150 and 158.

6 The Court reminds Defendant of the March 31, 2010 Order
7 "Regarding Discovery of Grand Jury Witnesses' Testimony." The
8 Order states that grand jury materials may only be used by
9 Defendant and defense counsel and only "for investigating,
10 preparing for trial, trial, and any appeals of this matter and for
11 no other purpose." Order at ¶ 1. The Order also provides,

12 2. The Defense shall take all reasonable steps to
13 (a) maintain the confidentiality of this Discovery and
14 (b) safeguard this Discovery from inadvertent disclosure or
15 review by any third party.

16 3. The Defense may share this Discovery material with any
17 investigators, consultants or experts retained by the
18 Defense in connection with this case provided that the
19 Defense informs any such individual(s) of this Order and
20 obtains their written consent to comply with and be bound by
21 its terms.

22 Id. at ¶¶ 2-3. Despite this Order, Defendant stated, "I sent
23 copies of the grand jury's 'Reporter's transcript of proceedings'
24 to my family to have investigated." Docket No. 150. This is a
25 violation of the Court's order because there is no evidence that
26 any member of Defendant's family has been retained in connection
27 with this case or that any member of his family has provided
28 written consent that he or she will comply with the Order. Unless
29 Defendant comes forward with such evidence, he shall immediately
30 return or certify the destruction of any copies of the transcripts
31 sent to family members or any other person who is not defense

counsel or a retained defense investigator, consultant or expert.

IT IS SO ORDERED.

Dated: 06/17/10



CLAUDIA WILKEN
United States District Judge